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In the Supreme Court of the United States

OCTOBER TERM, 1976

CHRISTIANSBURG GARMENT COMPANY, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 4-A to 13A) is reported at 550 F. 2d 949. The district court ruling denying the award of attorney's fees (Pet. App. 1-A to 3-A) is not officially reported. The order of the district court granting summary judgment is reported at 376 F. Supp. 1067.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 1977. The petition for a writ of certiorari was filed on April 9, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court abused its discretion in declining to award attorney's fees to a prevailing defendant in Title VII litigation initiated in good faith by the Equal Employment Opportunity Commission.

STATUTE INVOLVED

Section 706(k) of Title VII, Civil Rights Act of 1964, 78 Stat. 259, 42 U.S.C. 2000e-5(k), provides:

> In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

STATEMENT

In 1968 Rosa Helm filed a charge with the Equal Employment Opportunity Commission alleging racial discrimination by Christianburg Garment Company with respect to a layoff.[1] After an investigation and a reasonable cause determination, conciliation was initiated. After conciliation failed, the Commission notified Ms. Helm on July 1, 1970, of her right to file suit in federal court. Ms. Helm, however, did not exercise her option to initiate litigation.

Basing its jurisdiction on the Rosa Helm charge, the Commission filed suit in the Western District of Virginia against Christiansburg Garment Company alleging that the company had discriminated, and continued to discriminate, against black employees in violation of Section 703(a) of

[1]The facts of this case are set forth in the opinion of the court of appeals (Pet. App. 5-A to 6-A).

Title VII, 78 Stat. 255, 42 U.S.C. 2000e-2(a). Petitioner moved for summary judgment claiming that the suit was barred by the 180-day provision in Section 706(f)(1), as amended, 42 U.S.C. (Supp. V) 2000e-5(f)(1), that the suit was barred by the two-year state statute of limitations for personal injuries, and that the charge on which the suit was based was not "pending" before the Commission when the 1972 amendments to Title VII authorizing Commission litigation took effect (Pet. App. 1-A to 2-A).[2] The district court rejected the first two arguments but granted defendant's motion for summary judgment on the third issue. The Commission did not appeal.

On February 20, 1975, more than nine months after the district court's order granting summary judgment, Christiansburg filed a petition for an award of attorney's fees pursuant to Section 706(k) of Title VII. On July 28, 1975, the district court denied the company's petition, stating (Pet. App. 2-A to 3-A):

> Although petitioner prevailed on its motion for summary judgment, the Commission's action in bringing the suit cannot be characterized as unreasonable or meritless. Of the three grounds raised by petitioner in support of its motion for summary judgment, this court ruled in favor of the Commission on two of the grounds. But more importantly, the basis upon which petitioner prevailed was an issue of first impression requiring judicial resolution. The Commission's

[2]Section 14 of the 1972 amendments to Title VII (86 Stat. 113) states:

> The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of the enactment of this Act and all charges filed thereafter.

statutory interpretation of §14 of the 1972 amendments was not frivolous, and the court has no doubt this suit represented a good faith effort by the Commission to vigorously pursue the duties assigned to it by Congress under Title VII. In such circumstances the court does not believe that an award of attorney's fees against the Commission is justified.

On appeal, the court of appeals, one judge dissenting, upheld the district court's denial of attorney's fees (Pet. App. 4-A to 13-A). Recognizing that "these policy considerations which support the award of fees to a prevailing plaintiff are not present in the case of a prevailing defendant" (*id.* at 7-A), the court of appeals approved the standard which had been applied by the district court—that an award of attorney's fees against the Commission would be appropriate only when the Commission acted in "bad faith" (*id.* at 9-A).

ARGUMENT

The court of appeals correctly held that attorney's fees are to be awarded against the Commission only upon a finding of bad faith or vexatiousness, a standard that has been uniformly adopted by the courts of appeals that have passed on the issue. *United States Steel Corp.* v. *United States*, 519 F. 2d 359, 364 (C.A. 3); *Van Hoomissen* v. *Xerox Corp.*, 503 F. 2d 1131 (C.A. 9).[3] See also *Equal Employment*

[3]In *Van Hoomissen*, relied on by petitioner (Pet. 5) and by the dissenting judge below (Pet. App. 9-A to 10-A), the Ninth Circuit noted that "[t]he court in allowing attorney's fees was mindful that the appeal by EEOC was vexatious and prosecuted on highly questionable grounds" (unreported order on petition for rehearing, quoted by the Third Circuit in *United States Steel Corp., supra*, 519 F. 2d at 364 and n. 23). Moreover, the court of appeals in that decision explicitly recognized that the purpose of the fee provision to encourage private enforcement was an appropriate factor to be considered in the exercise of its

Opportunity Commission v. *MacMillian Bloedel Containers, Inc.*, 503 F. 2d 1086 (C.A. 6). The same principles have been applied with respect to the assessment of fees against unsuccessful private plaintiffs. In *Carrion* v. *Yeshiva University*, 535 F. 2d 722, 727, the Second Circuit recently held:

> * * * [A] prevailing defendant should be permitted such fees, not routinely, not simply because he succeeds, but only where the action brought is found to be unreasonable, frivolous, meritless or vexatious.[4]

Congress has also approved this standard. In enacting the Civil Rights Attorney's Fees Awards Act of 1976, Pub. L. 94-559, 90 Stat. 2641, amending 42 U.S.C. 1988, Congress noted (S. Rep. No. 94-1011, 94th Cong., 2d Sess., pp. 4-5 (1976)):

> It is intended that the standards for awarding fees be generally the same as under the fee provisions of the 1964 Civil Rights Act. A party seeking to enforce the rights protected by the statutes covered by S. 2278, if successful, "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968). Such "private attorneys general" should not be deterred from bringing good faith actions to vindicate the fundamental rights here involved by the prospect of having to pay their

discretion to award fees. Nothing in that opinion conflicts with the holding of the court of appeals below that fees will not be awarded to prevailing defendants in the absence of bad faith (503 F. 2d at 1133).

[4]See to the same effect, *Miller* v. *International Paper Co.*, 408 F. 2d 283 (C.A. 5); *Grubbs* v. *Butz*, 548 F. 2d 973 (C.A. D.C.); *Wright* v. *Stone Container Corp.*, 524 F. 2d 1058 (C.A. 8); *Richardson* v. *Hotel Corp. of America*, 332 F. Supp. 519, 522 (E.D. La), affirmed, 468 F. 2d 951 (C.A. 5).

> opponent's counsel fees should they lose. * * * *Such a party, if unsuccessful, could be assessed his opponent's fee only where it is shown that his suit was clearly frivolous, vexatious, or brought for harassment purposes. United States Steel Corp.* v. *United States*, 385 F. Supp. 346 (W.D. Pa. 1974), aff'd [519 F. 2d 359] (3d Cir. 1975). This bill thus deters frivolous suits by *authorizing an award of attorneys' fees against a party shown to have litigated in "bad faith"* under the guise of attempting to enforce the Federal rights created by the statutes listed in S. 2278. * * * [Footnotes omitted; emphasis supplied.]

Petitioner argues (Pet. 5) that since a prevailing plaintiff in a Title VII action is "awarded attorneys' fees in all but very unusual circumstances,"[5] it is "unfair" not to award attorney's fees as a matter of course to a prevailing defendant. Whatever the merits of that argument as to private litigants, it cannot apply to the Commission. Section 706(k) authorizes fee awards only to a "prevailing party, other than the Commission," and therefore the Commission cannot recover attorney's fees as plaintiff.

In any event, petitioner's argument fails to take into consideration the basic purpose behind the award of attorney's fees. Under the long-established "American rule," recently reaffirmed by this Court in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240, attorney's fees are not normally recoverable as costs by the prevailing party in a lawsuit. Congress has authorized specific exceptions to the rule and permitted an award of fees in the discretion of the district court in order to further the purposes of particular statutory schemes. In exercising its

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[5] *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 415. See also *Newman* v. *Piggie Park Enterprises*, 390 U.S. 400, 402.

discretion to award fees, a court is to be guided principally by the underlying purposes of the particular statutory scheme. *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 416; *Hecht Co.*, v. *Bowles*, 321 U.S. 321. In order to further the national goal of eradicating employment discrimination, a prevailing Title VII plaintiff should ordinarily be awarded attorney's fees because litigation vindicating civil rights furthers the public interest. *Albemarle Paper Co.* v. *Moody*, *supra*, 422 U.S. at 415. See *Newman* v. *Piggie Park Enterprises*, 390 U.S. 400, 402.[6]

By contrast, a successful defense to a civil rights claim generally does not have equivalent implications for the furtherance of the statutory goals of enforcing civil rights. A "prevailing defendant seeking an attorney's fee does not appear before the court cloaked in a mantle of public interest." *United States Steel Corp.* v. *United States*, *supra*, 519 F. 2d at 364. Because "these policy considerations which support the award of fees to a prevailing plaintiff are not present in the case of a prevailing defendant" (Pet. App. 7-A), an award of fees to successful defendant in legitimate suit brought in good faith to enforce public rights, is not ordinarily warranted.[7] Since the district court in

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[6] Nothing in *Newman* suggests that the good faith of an unsuccessful plaintiff is not an appropriate consideration in the exercise of discretion to award fees (cf. Pet. 7). This Court merely held that the application of the good faith standard to preclude an award to a prevailing plaintiff would not effectuate the remedial purposes of the counsel fee provision.

[7] The dissenting judge in the court of appeals characterized this rule as a "double standard" (Pet. App. 13-A) involving "policy considerations [that] are not matters for the courts" (Pet. App. 12-A). But the policy of eliminating discrimination in employment has been determined by Congress and designated as a matter of the highest priority. *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36; *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747. Moreover, as noted above, Congress has explicitly

this case found that the Commission's action represented a good faith effort to enforce Title Vii, the denial of attorney's fees was a proper exercise of the court's discretion that does not merit further review by this Court.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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recognized that the statutory policy will not be served by the award of fees to successful defendants in the absence of the plaintiff's bad faith. See S. Rep. No. 94-1011, *supra*, at 4-5. On the other hand, assessment of fees against a vexatious plaintiff satisfies the "ambulance chasing" concern that was raised by Senator Ervin during the congressional consideration of the fee award statute (110 Cong. Rec. 14213-14214 (1964)). Contrary to petitioner's contention (Pet. 6), nothing in the language of the statute indicates that the Court must exercise its discretion in a mechanistic fashion, awarding fees to all prevailing parties without regard to the congressional policies involved.

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